REMARKS

The amendments to the description correct editorial errors which are self-evident.

Applicants note the Examiner's disagreement with the proofs submitted under Rule 131. Applicants respectfully disagree that these proofs amount to "no evidence" of reduction to practice prior to the filing date of the Queisser patent. Reconsideration is respectfully requested, especially in view of the evidence of record that applicants' claimed invention was reduced to practice before the Queisser filing date.

Applicants note the Office rejects all of claims 1-10 and 12-20 under either Section 102(e) or Section 103(a) from Queisser U.S. Patent No. 5,818,953, either alone or in combination with Bolle U.S. Patent No. 5,546,475 and/or Sistler U.S. Patent No. 4,975,863, or Heck U.S. Patent No. 5,845,002 in view of Sistler. Applicants also note, with appreciation, the observations in the Office Action regarding language not found in the claims. In essence, applicants now add language along these lines to the claims.

More specifically, each of independent claims 1, 10 and 12 is amended to refer to a fruit matrix of fruit particles in a matrix of sugar, starch, or sugar and starch. Support for this added language is found, for example, in lines 2-4 of the second

paragraph on page 1 of the description. The added claim language
goes on to specify that this fruit matrix is used in fruit
fillings, toppings, dairy products or cooked food products.
Support for this language is found in the last paragraph on page
7 of the description.

It is respectfully beleived that, with these amendments, it
is clear that applicants do not claim a matrix which is a two-
dimensional array of food products as disclosed in the Queisser
patent. This has been discussed in previous communications of
applicants, which applicants reassert but do not repeat in this
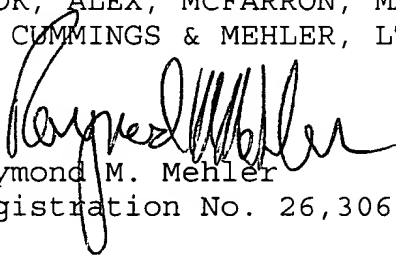paper.

If applicants were to follow the teachings of Queisser, one
would not analyze the fruit matrix as applicants claim.
Instead, one would remove the fruit particles from the matrix and
then study the separated fruit particles. This is an approach
which clearly is different from that as claimed, wherein the
fruit matrix itself is analyzed, without requiring separation of
fruit particles from the matrix of sugar, starch, or sugar and
starch. The latter approach is in accordance with the problem of
the "fruit retention test", the very problem solved by
applicants' invention. See the introduction of the
specification.

Reconsideration and withdrawal of the Section 102 and

Section 103 rejections of claims 1-10 and 12-20 are respectfully

requested.

Favorable consideration is respectfully requested.

Respectfully submitted,

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<u>VERSION WITH MARKINGS TO SHOW CHANGES MADE</u>

The following shows changes made to the last paragraph on page 7:

--The [first] <u>fruit</u> particles analyzed can be fruit pieces and food products containing fruit pieces that are used in fruit filling<u>s</u>, toppings, or dairy or cooked food products. The fruit particles may be fresh, frozen or cooked and may be of any size or shape compatible with the apparatus used. --

--1. (Amended) Apparatus for the measurement of fruit particles in a matrix comprising:

a substantially opaque cabinet;

a sample tray adapted to received a fruit matrix of fruit particles in a matrix selected from the group consisting of a sugar matrix, a starch matrix or a sugar and starch matrix, said fruit matrix is used in fruit fillings, toppings, dairy products or cooked food products;

a camera in the upper portion of said cabinet for taking an image from the fruit matrix;

a light source in said cabinet;

[a sample tray;] and

a computer with image analyzing software.--

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--10.   (Amended) Apparatus for the measurement of fruit particles in a matrix comprising:

a substantially opaque cabinet with a non-reflecting inside surface;

a sample tray with a light-transmitting bottom, said sample tray adapted to receive a fruit matrix of fruit particles in a matrix selected from the group consisting of a sugar matrix, a starch matrix or a sugar and starch matrix, said fruit matrix is used in fruit fillings, toppings, dairy products or cooked food products;

a camera in the upper portion of said cabinet for taking an image from the fruit matrix;

a light box with light intensity adjusting switches;

an incident light source;

[a sample tray with a light-transmitting bottom;] and

a computer with image analyzing software.--

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--12. (Amended) A process for the measurement of fruit particles in a matrix comprising:

placing a sample tray <u>a fruit matrix of</u> fruit particles in a matrix <u>selected from the group consisting of a sugar matrix, a starch matrix or a sugar and starch matrix, said fruit matrix is used in fruit fillings, toppings, dairy products or cooked food products</u>;

illuminating said fruit particles and matrix so that an image may be obtained in which the fruit particles are distinguishable from the background;

capturing a computer-readable image of at least a portion of said illuminated fruit particles and matrix; and

using a computer and an image analyzing software program to analyze and image and obtain information concerning said fruit particles.--

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